

FILED

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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDGAR GARCIA-MONTOYA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75352

Agency No. A77-301-065

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Edgar Garcia-Montoya, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

Garcia-Montoya moved to reopen on the ground that his former attorney provided ineffective assistance of counsel during his merits hearing and subsequent appeal from the denial of his cancellation of removal application. Garcia-Montoya cannot establish prejudice as a result of the alleged ineffective representation because he admitted he has no active relationship with his daughter, his only qualifying relative for purposes of establishing hardship. Accordingly, the BIA did not abuse its discretion in denying his motion to reopen. *See id.* at 901 (explaining that ineffective assistance of counsel must prejudice the alien to merit reopening).

PETITION FOR REVIEW DENIED.